

Appln. No. 09/807,869
Amendment dated February 17, 2006
Reply to Office Action of December 29, 2006

REMARKS/ARGUMENTS

Reconsideration of the present application, as amended, is respectfully requested.

The December 29, 2005 Final Office Action and the Examiner's comments have been carefully considered. In response, claims are cancelled, amended and added, and remarks are set forth below in a sincere effort to place the present application in form for allowance. The amendments are supported by the application as originally filed. Therefore, no new matter is added.

Inasmuch as the present amendment raises no new issues for consideration, and, in any event, places the present application in condition for allowance or in better condition for consideration on appeal, its entry under the provisions of 37 CFR 1.116 are respectfully requested.

DOUBLE PATENTING

The Examiner's statement that if claims 1-4 are found allowable, that claims 5-8 would be objected to under 37 CFR 1.75 as being substantial duplicates thereof is acknowledged. In response, Applicant respectfully states that claims 1-4 and 5-8, prior to entry of this Amendment, are not substantial duplicates thereof. While independent claims 1 and 5 are both directed to a system for the distribution of audio and video files, the

Appln. No. 09/807,869
Amendment dated February 17, 2006
Reply to Office Action of December 29, 2006

limitations set forth in claim 1 include "means for" language, while claim 5 does not recite "means for" language. It is well established that the scope of protection for an invention which includes "means for" language is different from a similarly worded claim which does not include "means for" language.

In view of the foregoing, Applicant respectfully requests the Examiner to reconsider the objection under 37 CFR 1.75 and the potential double patenting rejection.

PRIOR ART REJECTIONS

In the Office Action, claims 1 and 5 are rejected under 35 USC 102(e) as being anticipated by USP 6,226,672 (DeMartin et al.). Claims 2-8 are rejected under 35 USC 103 as being unpatentable over DeMartin et al. in view of USP 5,790,935 (Payton).

In response, claims 3, 4, 7 and 8 are cancelled and limitations from claims 3 and 4 are incorporated into claim 1 and limitations from claims 7 and 8 are incorporated into claim 5. Therefore, no new issues are presented. The amendments to claims 1 and 5 are made to more clearly define and clarify the present claimed invention.

In the Office Action, the Examiner rejects claims 4 and 8 under 35 USC 103(a) as being unpatentable over DeMartin et al. in

Appln. No. 09/807,869
Amendment dated February 17, 2006
Reply to Office Action of December 29, 2005

view of Payton, contending that Payton teaches a system wherein the local selection device stores consecutive choices made by a subscriber, in a log file, and the processor reads out the selection stored in the local selection device and periodically replaces part of the collection of selected files by files selected once again from the database. However, Payton does not disclose a log file that is used in order to refresh the local files which have been actually selected by the subscriber as now recited in amended claim 1 (see also the present application at page 6, lines 17-19). Instead, Payton teaches that the use by a subscriber of an item is recorded (Payton, col. 6, line 41). Based on this, future predictions are made (Payton, col. 6, lines 43-44). Also according to Payton, the subscriber's viewing habits are monitored.

Payton also teaches that a log file can be used in order to identify the subscriber's preferences in relation to content. This is in contrast with what is recited in amended claim 1, according to which a log file is used to identify which files are already selected by a subscriber (so that these files can be refreshed). In this respect, with currently amended claims 1 and 5, a different problem is solved from the problem that is identified in Payton. In Payton, the problem that is identified is how to determine that the content at the local subscriber's

Appln. No. 09/807,869
Amendment dated February 17, 2006
Reply to Office Action of December 29, 2006

location meets the preferences of that subscriber. According to amended claims 1 and 5, however, the problem that is solved is that refreshing files requires a lot of capacity of the network (see the present application at page 5, lines 34-35). The solution to this problem is to refresh only the files which have been actually selected by the subscriber, so that the number of files to be refreshed is reduced.

The present claimed invention as defined by amended claims 1 and 5 is patentable over the cited references because the references do not disclose, teach or suggest:

wherein the local selection device stores consecutive choices made by the subscriber, in a log file, the processor reading out the selection stored in the local selection device and periodically replacing part of the collection of selected files by files selected once again from the database (see claim 1, lines 23-27 and claim 5, lines 23-27).

In view of the foregoing, claims 1 and 5 are patentable over the cited references under 35 USC 102 as well as 35 USC 103.

Claims 2 and 6 are either directly or indirectly dependent on claims 1 and 5 and are patentable over the cited references in view of their dependence on claims 1 or 5 and because the references do not disclose, teach or suggest each of the limitations set forth in claims 2 and 6.

Appln. No. 09/807,869
Amendment dated February 17, 2006
Reply to Office Action of December 29, 2006

In view of all of the foregoing, claims 1, 2, 5 and 6 are in form for immediate allowance, which action is earnestly solicited.

NEW CLAIMS

New claims 9 and 10 are added to the present application. Claim 9 is dependent on claim 1 and claim 10 is dependent on claim 5. Claims 9 and 10 recite the feature that the files that are refreshed have been actually selected by the subscriber. Support for new claims 9 and 10 can be found at page 6, lines 16-19 of the present application.

Claims 9 and 10 are patentable over the cited references in view of their dependence on claims 1 or 5, and because the references do not disclose, teach or suggest each of the limitations set forth in claims 9 and 10.

* * * * *

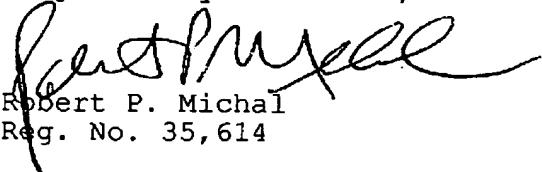
Entry of this Amendment under the provisions of 37 CFR 1.116, allowance of the claims and the passing of this application to issue are respectfully solicited.

If the Examiner disagrees with any of the foregoing, the Examiner is respectfully requested to point out where there is support for a contrary view.

Appln. No. 09/807,869
Amendment dated February 17, 2006
Reply to Office Action of December 29, 2006

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,


Robert P. Michal
Reg. No. 35,614

Frishauf, Holtz, Goodman & Chick, P.C.
220 Fifth Avenue
New York, New York 10001-7708
Tel. (212) 319-4900
Fax (212) 319-5101
RPM/ms

-12-